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# In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 423

THE HOMEWORKERS' HANDICRAFT COOPERATIVE AND MILLHISER BAG COMPANY, INC., PETITIONERS

*v.*

WILLIAM R. MCCOMB, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT*

## BRIEF FOR RESPONDENT IN OPPOSITION

### OPINIONS BELOW

The findings of fact and conclusions of law of the District Court (R. 3-17) have not been reported. The opinion of the Court of Appeals (R. 157-169) is reported at 176 F. 2d 633.

### JURISDICTION

The judgment of the court below was entered on August 22, 1949 (R. 169-170). The petition for certiorari was filed on October 27, 1949. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### QUESTIONS PRESENTED

1. Whether homeworkers engaged in stringing tobacco and other industrial bags for a bag manufacturer are "employees" within the meaning of the Fair Labor Standards Act, or whether the organization of the homeworkers into a "cooperative" excludes them from the scope of the Act.

2. Whether Section 9 of the Portal-to-Portal Act of 1947, or other equitable considerations, justify denying the injunction remedy and permitting petitioners to continue violating the Fair Labor Standards Act of 1938.

### STATUTES INVOLVED

The statutory provisions involved are Sections 3(a), 3(d), 3(e), 3(g), 6(a)(3), 11(c), 11(d), 15(a)(1), 15(a)(5) and 17 of the Fair Labor Standards Act of 1938, c. 676, 52 Stat. 1060, 29 U.S.C. 201, and Section 9 of the Portal-to-Portal Act of May 14, 1947, c. 52, 61 Stat. 84, 29 U.S.C., Supp. II, 251 *et seq.* These sections are printed as an appendix to this brief.

### STATEMENT

Petitioner Millhiser Bag Company, a Virginia corporation, is engaged in the business of manufacturing cotton textile bags used for tobacco, films, industrial machinery, sausage, etc. (R. 3). In order for the bags to be completed and marketable, a stringing operation consisting of the insertion of a single or double drawstring is required (R. 3). This work is performed by 1800 to 2000 women in

their homes in North Carolina and Virginia (R. 158). Prior to the enactment of the Fair Labor Standards Act the company's agents distributed the unfinished bags to the homeworkers, collected them after they had been strung and paid for the work at the piece rate allowed (R. 3-4, 158). The agents or distributors received money from the bag manufacturers to pay such piece rates and also received a commission or service fee or salary plus commission for their services (R. 4).[1]

"The insertion of the strings [in the bags] is a simple operation requiring little or no skill and no supervision." (R. 158, 9, 11). It consists of separating bags from a string by clipping them, turning some of the bags inside out, and inserting a string in the bag with a needle (R. 9). The string is then cut, and some bags are tagged (*ibid.*). Finally, the bags are bunched into lots of 100 and collected by the distributor (R. 9-10, 158). The bags and the drawstrings are furnished by the bag manufacturer. "The bags on which the labor is performed never become their [the homeworkers'] property in any sense, but remain the property of the companies by whom they are sold when the stringing

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[1] Another bag manufacturer, Chase Bag Company, was joined as defendant in the Administrator's suit. The Court of Appeals affirmed the district court's judgment dismissing the complaint as to Chase Bag Company on the ground that Chase had ceased employing homeworkers and had no intention of using them in the future (R. 14, 18, 168-169). The references in this brief and the opinion below to bag manufacturers include Chase Bag Company as well as petitioner Millhiser Bag Company.

operation is completed." (R. 160). The homeworkers' compensation is based on a piece rate per one thousand bags which results in earnings ranging from 5 to 13 cents per hour (R. 45-47, 158, 162).

Shortly after the passage of the Fair Labor Standards Act, "in an effort to avoid its application" the Virginia-Carolina Service Corporation was organized to deal with the workers; and attorneys or officials of the bag manufacturers were the original incorporators and officers (R. 158; 4). The homeworkers were paid for stringing the bags as formerly, with an additional 15 cents per thousand bags paid the corporation for handling the distribution (R. 158; 4-5). As the court below observed, the corporation "merely did what the bag companies had formerly done through their agents, who were employed by it after its organization" (R. 158-159).

In 1941 the attorney who had organized the corporation "becoming fearful that it might be held subject to the provisions of the act, proceeded to dissolve it and to organize the [Homeworkers' Handicraft] cooperative, composed of the homeworkers, to take over its functions" (R. 159; 5-6). The formation of the cooperative was begun by a letter from the attorney who had organized Service Corporation to the workers to attend a meeting (R. 6). He told the approximately 200 women who assembled for the meeting that he had dissolved the Service Corporation "because he was unwilling to assume the risk involved in the event it were held by

the courts that the bag stringers were employees of that Corporation, and he stated that this meant that there would be no more bags to be distributed by that Corporation." (*ibid.*). In answer to the women's inquiries on how the stringing of bags could be continued, he suggested the formation of a cooperative (*ibid.*). A board of directors was elected at this meeting and the attorney, previously attorney for Service Corporation (and who was still petitioner Millhiser's counsel), became general counsel and a member of the board of directors of the cooperative (R. 159; Pet. ex. 2). The individual who had previously been in charge of the distribution of the bags for the Millhiser Bag Company (and later vice president and president of Service Corporation) became general manager and a member of the board of directors of the new enterprise. (R. 4, 6).

The cooperative has operated no differently from the predecessor corporation. As stated in a letter sent by the cooperative's counsel to the Bureau of Internal Revenue when seeking a tax refund, "in taking over the organization of Virginia-Carolina Service Corporation, the cooperative effected no change whatever insofar as the duties, responsibilities and emoluments of the homeworkers were concerned, except to the extent that under the cooperative form of management each person engaged in the stringing of bags was required to own a qualifying share of stock in the cooperative, which had a stated value of $5.00 per share and which could

be paid for by the members over an extended period of time" (Pet. ex. 14; R. 110).[2]

The earnings of the homeworkers under the cooperative organization are no greater than the meager piece-rate wage received when the workers were employed directly by the bag manufacturers (R. 159). Although the cooperative's certificate of incorporation refers to the piece rate paid as "advances" on dividends for work performed (Pet. ex. 28) and the by-laws refer to "patronage dividends" (Pet. ex. 4, Art. XI, Sec. 3(4)), the contract furnished for the homeworker to sign provides for cash payment "in an amount equal to the maximum piece-work rates that are now in effect in this community." (R. 115). At no time did any worker receive as much as 40 cents an hour—or even the original statutory minimum of 25 cents an hour (R. 158, 159, 162). The meager piece rates were suggested originally by the cooperative's counsel (R. 43), and no increase in the rates occurred "until after this suit was instituted, notwith-

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[2] Although the by-laws conditioned membership on stock subscription, required approval of the applicant for membership by the board of directors and made membership certificates non-transferable (Pet. ex. 4, Art. II, secs. 1, 2 and 4), the record shows that non-member stringers have used membership cards issued to relatives who were no longer stringing or who were deceased (May 6 Dep. 45, 130-131; May 13 Dep. 11-12), and work has been distributed to persons who were known not to be members (Sept. 20 Ex. 11, May 6 Dep. 7, 30-31, 33-35, 37-38, 42, 47, 51, 59, 84-85, 108-109, 125, 127, 134; May 7 Dep. 7-8, 26, 47-48, 69; May 13 Dep. 3-4, 6, 8, 11-12, 14, 28; May 14 Dep. 19, 22, 88-89). ("Dep." refers to depositions which are part of the record but not printed.)

standing the rise in the cost of living and of wages in all other lines of industry" (R. 159).

The District Court after trial denied the injunction and dismissed the complaint on the ground that the homeworkers were not employees but independent contractors (R. 15-16). Additional grounds given by the court for denying relief were that petitioners' acts or omissions were in good faith, in conformity with and in reliance on rulings of the Internal Revenue Bureau, and that the Administrator was estopped to object to petitioners' conduct because of his failure to institute proceedings at an earlier date (R. 16-17).

The Court of Appeals reversed the District Court's judgment and directed that an injunction issue against the Millhiser Bag Company, Incorporated and the Homeworkers' Handicraft Cooperative, Incorporated. (R. 169-170). The Court held that the member workers were employees of the bag manufacturers and of the "cooperative" and entitled to the benefits of the Act. It relied not only on the broad definitions governing employment in the Fair Labor Standards Act, but also concluded that it was "perfectly clear that, under common law concepts, they [the homeworkers] are employees and not independent contractors" (R. 160). Although recognizing that "the law of independent contractors has an important place in the law" (R. 160), the Court of Appeals stated that "surely it was never intended to apply to humble employees of this sort" (*ibid.*) who perform "a necessary

service in the manufacture of bags" and who "are paid at a rate which brings them the ridiculously low wage of from 5 to 13 cents per hour for their labor" (R. 162). The interposition of the cooperative between the homeworkers and the bag manufacturers to distribute and collect the bags and to pay the workers "with money which the bag companies furnish" (R. 167) was held not to alter the "economic fact" that the homeworkers are working for the bag manufacturers (*ibid.*).

The Court of Appeals further held that the Portal-to-Portal Act of 1947 has no bearing on this case, and that the Government's relief was not barred by laches (R. 168).

## ARGUMENT

### I

1. The Court of Appeals correctly applied the decisions of this Court in holding the homeworkers to be petitioners' employees. There can be little doubt that "homeworkers generally are included in the statutory definition of 'employee'." *Walling* v. *American Needlecrafts*, 139 F. 2d 60, 64 (C.A. 6) and *Walling* v. *Twyeffort, Inc.*, 158 F. 2d 944 (C.A. 2), certiorari denied, 331 U. S. 851, cited with approval in *Rutherford Food Corp.* v. *McComb*, 331 U. S. 722, 729. Such workers are clearly within the scope and purposes of the Fair Labor Standards Act, and the manufacturers for whom they work are responsible as their employers for the maintenance of the minimum labor standards provided in the Act, regardless whether the unfair labor

standards are applied in the home or in the factory. See *Gemsco* v. *Walling*, 324 U. S. 244, 251-252, 258, 259; *United States* v. *Rosenwasser*, 323 U. S. 360, 363. Accord: *Fleming* v. *Palmer*, 123 F. 2d 749 (C.A. 1), certiorari denied *sub nom. Caribbean Embroidery Cooperative* v. *Fleming*, 316 U. S. 662; cf. *Western Union Telegraph Co.* v. *McComb*, 165 F. 2d 65 (C.A. 6), certiorari denied, 333 U. S. 862. See also *Schwing* v. *United States* and *Wanamaker* v. *United States*, 165 F. 2d 518 (C.A. 3); *United States* v. *Vogue, Inc.*, 145 F. 2d 609 (C.A. 4), arising under the Social Security Act.[3] If there were any doubt of this, it has been completely dispelled by the recent amendment to the Act conferring on the Administrator power to restrict or entirely prohibit homework. Section 11(d) of the Fair Labor Standards Act of 1938, as amended by the Act of October 26, 1949 (Fair Labor Standards Amendments of 1949, Pub. Law. 393, Sec. 9, 81st Cong., 1st sess.). See Appendix, p. 18.

The specific question presented by this case is whether the manufacturers may set up an interme-

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[3] Numerous Federal district court decisions have consistently reached the same result. *Walling* v. *T. Buettner & Co.*, 5 Wage Hour Rept. 279 (N.D. Ill., 1942), reversed on other grounds, 133 F. 2d 306 (C.A. 7), certiorari denied, 319 U. S. 771; *Walling* v. *Muncie Novelty Co.*, 6 W. H. Cases 557 (S.D. Ind., 1946); *Walling* v. *Hastings*, 6 W. H. Cases 554 (S.D. Ind., 1946); *Walling* v. *Freidlin*, 66 F. Supp. 710 (M.D. Pa.), overruling *Walling* v. *Todd*, 52 F. Supp. 62 (M.D. Pa.); *Walling* v. *Schweitzer*, 6 W. H. Cases 283 (D.C. Puerto Rico, 1946); *Fleming* v. *Demeritt Co.*, 56 F. Supp. 376 (D. Vt.); *Walling* v. *Sieving*, 9 Wage Hour Rept. 356 (N. D. Ill., 1946); *Nelson* v. *Kuepper Favor Co.*, 4 Wage Hour Rept. 699 (N.D. Ill., 1941); *Mason* v. *T. & P. Optical Mfg. Co.*, 42 F. Supp. 98 (S.D. N.Y.); *Walling* v. *Frank*, 62 F. Supp. 261 (W.D. Ky.); *Walling* v. *Wolff*, 63 F. Supp. 605 (E.D. N.Y.).

diary agency or organization to farm out their work and thus avoid responsibility for the maintenance of the statutory standards. We believe, as the court below stated, that *Rutherford Food Corp.* v. *McComb, supra,* is "directly in point" (R. 166) and clearly answers this question in the negative. The cooperative here stands in much the same position as the "contractor" boner engaged to perform the boning operations in the *Rutherford* case. The method of payment to the boners, like the "advances" to the homeworkers, was based on a division of earnings paid to the "contractor." In the instant case, as in *Rutherford,* "While profits * * * depended upon the efficiency of their work, it was more like piecework than an enterprise that actually depended for success upon the initiative, judgment or foresight of the typical independent contractor." 331 U. S. at 730.

The "profits" of the cooperative depend no more upon the efficiency and independent initiative of the workers than did the profits of the boners in the *Rutherford* case, and the amount of investment in facilities and equipment is even less than that of the boners in the *Rutherford* case. Here, as in *Rutherford,* "the work done, in its essence, follows the usual path of an employee" and "putting on an 'independent contractor' label does not take the worker from the protection of the Act" (*Rutherford* opinion, p. 729).

Where, as here, the workers are completely dependent, economically and practically, on the

manufacturer for their work and their wages, where it is the manufacturer's enterprise upon which the workers' financial and other working conditions depend, and where the work is an integral part of the manufacturer's business, the statutory liability cannot be avoided simply by calling the workers "independent contractors." Substance controls, not labels. Any other interpretation "would only make for a continuance, to a considerable degree, of the difficulties for which the remedy was devised and would invite adroit schemes by some employers and employees to avoid the immediate burdens at the expense of the benefits sought by the legislation." *United States* v. *Silk,* 331 U. S. 704, 712.[4] If the workers are in a very real sense "working for" the manufacturers, and not for themselves, despite the intermediate "cooperative" they are employees of the manufacturers and entitled to the statutory benefits. "In the application of social legislation employees are those who as a matter of economic reality are dependent upon the business to which they render

[4] Petitioners' suggestion (Pet. pp. 28-29) that *United States* v. *Silk,* 331 U. S. 704 is no longer a persuasive authority because of the amendment to the Social Security Act, requiring the application of common law standards in determining the employment relationship is obviously without merit. The fact that there has been amendment to other social legislation would seem only to confirm that Congress has chosen not to disturb the pattern of the Fair Labor Standards Act in this respect. See also Fair Labor Standards Amendments of 1949, Pub. Law 393, 81st Cong., 1st Sess., Sec. 9, giving the Administrator power to restrict or prohibit entirely homework (Appendix, p. 18).

service." *Bartels* v. *Birmingham,* 332 U. S. 126, 130.

*Walling* v. *Portland Terminal Co.,* 330 U. S. 148, relied on by petitioner (Pet. p. 17), deals with an entirely different question and does not conflict with the decision below. Unlike the railroad trainees in the *Portland Terminal* case, the homeworkers here are not stringing bags "for their own advantage" (*Rutherford* decision, 331 U. S. at 729) without any expectation of compensation from anyone for their work but, like the boners in the *Rutherford* case, perform services regularly and to the immediate advantage of the bag manufacturer's business.

2. There is no conflict among the circuits. The courts which have ruled on this issue have unanimously held homeworkers to be employees entitled to the Act's benefits. *Walling* v. *American Needlecrafts,* 139 F. 2d 60 (C.A. 6); *Walling* v. *Twyeffort, Inc.,* 158 F. 2d 944 (C.A. 2), certiorari denied, 331 U. S. 851; *Gemsco* v. *Walling,* 144 F. 2d 608 (C.A. 2), affirmed, 324 U. S. 244; *Fleming* v. *Palmer,* 123 F. 2d 749 (C.A. 1), certiorari denied *sub nom. Caribbean Embroidery Cooperative* v. *Fleming,* 316 U. S. 662; cf. *Western Union Telegraph Co.* v. *McComb,* 165 F. 2d 65 (C.A. 6), certiorari denied, 333 U. S. 862. See also *Schwing* v. *United States* and *Wanamaker* v. *United States,* 165 F. 2d 518 (C.A. 3), arising under the Social Security Act; *United States* v. *Vogue, Inc.,* 145 F.

2d 609 (C.A. 4). Workers have been held covered by the Act, notwithstanding that there was little or no direct supervision or inspection of the work during performance (*Rutherford Food Corp.* v. *McComb, supra; United States* v. *Silk, supra; Walling* v. *American Needlecrafts, supra; Walling* v. *Twyeffort, Inc., supra; Fleming* v. *Palmer, supra*); that there was no control over the premises on which the work was performed (*Bartels* v. *Birmingham, supra; Walling* v. *American Needlecrafts, supra; Walling* v. *Twyeffort, Inc., supra; Western Union Telegraph Co.* v. *McComb, supra*); that the workers were free agents with respect to the amount of time spent upon the work (see *United States* v. *Silk, supra; Walling* v. *American Needlecrafts, Inc., supra; Walling* v. *Twyeffort, Inc., supra; Fleming* v. *Palmer, supra; Western Union Telegraph Co.* v. *McComb, supra*); and that the workers were paid on the basis of work performed and not by a fixed salary or wages (*Rutherford Food Corp.* v. *McComb, supra; United States* v. *Rosenwasser, supra; Walling* v. *American Needlecrafts, supra; Fleming* v. *Palmer, supra*).

Petitioners' assertion that the lower court's decision is in conflict with *Walling* v. *Plymouth Mfg. Corp.*, 139 F. 2d 178 (C.A. 7), certiorari denied, 322 U. S. 741, and *Glenn* v. *Beard*, 141 F. 2d 376 (C.A. 6), certiorari denied, 323 U. S. 724, is without merit. The *Plymouth* case did not involve homeworkers, and the *Beard* case (arising under the Social Security Act) as pointed out below (R. 165), was decided

before this Court's decision in *Labor Board* v. *Hearst Publications,* 322 U. S. 111. Moreover, the Court of Appeals for the Sixth Circuit reached a contrary conclusion with respect to homeworkers under the Fair Labor Standards Act in *Walling* v. *American Needlecrafts,* 139 F. 2d 60—which, as already noted, p. 8, was specifically approved by this Court in the *Rutherford* case, and has recently been followed again by the same court which decided the *Beard* case. *Western Union Telegraph Co.* v. *McComb,* 165 F. 2d 65, 73 (C.A. 6), certiorari denied, 333 U. S. 862.

II

The lower court's holding that Section 9 of the Portal-to-Portal Act of 1947 has no application to this case (R. 168) accords with the decisions of every appellate court which has considered the question and is clearly correct. *McComb* v. *Robert W. Hunt Co.,* 172 F. 2d 751 (C.A. 7); *Northwestern-Hanna Fuel Co.* v. *McComb,* 166 F. 2d 932 (C.A. 8); *Western Union Telegraph Co.* v. *McComb,* 165 F. 2d 65 (C.A. 6), certiorari denied, 333 U. S. 862.

Petitioners apparently assume, for purposes of this argument, that they are the employers of the homeworkers. Under Section 9 of the Portal-to-Portal Act an employer has a defense against "liability or punishment" for failure to pay the statutory wages "prior to the date of the enactment of this Act, * * * if he pleads and proves that the act or omission complained of was in good faith in

conformity with and in reliance on any administrative regulation * * * interpretation * * * or enforcement policy." (See Appendix, p. 20.)

Section 9 of the Portal Act has consistently been held inapplicable to an action by the Administrator for an injunction which seeks only to restrain future illegal conduct. *McComb* v. *Robert W. Hunt Co., supra; Northwestern-Hanna Fuel Co.* v. *McComb, supra;* see *Western Union Telegraph Co.* v. *McComb, supra.* Even if the term "liability or punishment" were construed as including relief by way of injunction, Section 9 of the Portal Act would be inapplicable as it relates only to acts or omissions prior to May 14, 1947. Since, as the Court of Appeals found, petitioners' violations were continuing at the time of appeal (R. 168)—and since the stay of the mandate (granting an injunction) pending proceedings in this Court (R. 170) indicates they are still continuing—petitioners' reliance on Section 9 of the Act, which deals only with past claims, is clearly misplaced.

Although this Court has remanded employee actions for back wages in order that the lower courts might consider Portal Act defenses under Sections 2 and 9 (*149 Madison Avenue Corp.* v. *Asselta,* 331 U. S. 795 and *Alaska Juneau Gold Mining Co.* v. *Robertson,* 331 U. S. 793), it has denied review in the three cases instituted by the Administrator for injunction, where review was sought on such grounds. *Rutherford Food Corp.* v. *McComb,* rehearing denied, 332 U. S. 785; *Bibb Mfg. Co.* v.

*Walling,* 164 F. 2d 179 (C. A. 5), certiorari denied, 333 U. S. 836; *Western Union Telegraph Co.* v. *McComb,* 165 F. 2d 65 (C. A. 6), certiorari denied, 333 U. S. 862.

That the Government is not estopped by the doctrine of laches from instituting proceedings to restrain continuing or future violations of a statute is too clear for argument. *United States* v. *San Francisco,* 310 U. S. 16, 32; *Utah Power & Light Co.* v. *United States,* 243 U. S. 389, 409.

## CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for certiorari should be denied.

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NOVEMBER 1949.

APPENDIX

## Statutory Provisions Involved

Questions raised on this appeal deal with the applicability of the following sections of the Fair Labor Standards Act of 1938 and the Portal-to-Portal Act of 1947.

Fair Labor Standards Act of 1938, c. 676, 52 Stat. 1060, 29 U. S. C. 201:

> Sec. 3. As used in this Act—
>
> (a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.
>
> * * * * *
>
> (d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.
>
> (e) "Employee" includes any individual employed by an employer.
>
> * * * * *
>
> (g) "Employ" includes to suffer or permit to work.
>
> * * * * *
>
> Sec. 6. (a) Every employer shall pay to each of his employees who is engaged in com-

merce or in the production of goods for commerce wages at the following rates—

(1) during the first year from the effective date of this section, not less than 25 cents an hour,

(2) during the next six years from such date, not less than 30 cents an hour,

(3) after the expiration of seven years from such date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator issued under section 8, whichever is lower, * * *

* * * * *

SEC. 11. * * *

(c) Every employer subject to any provision of this Act or of any order issued under this Act shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this Act or the regulations or orders thereunder.

(d) The Administrator is authorized to make such regulations and orders regulating, restricting or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed

in this Act, and all existing regulations or orders of the Administrator relating to industrial homework are hereby continued in full force and effect.

* * * * *

SEC. 15. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person—

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or section 7, or in violation of any regulation or order of the Administrator issued under section 14; except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation;

(2) to violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order of the Administrator issued under section 14;

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(5) to violate any of the provisions of section 11 (c), or to make any statement, report, or record filed or kept pursuant to the provisions

of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

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SEC. 17. The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 20 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended (U. S. C., 1934 edition, title 28, sec. 381), to restrain violations of section 15.

Portal-to-Portal Act of 1947, 61 Stat. 84, 29 U. S. C., Supp. II, 251 *et seq.*:

SEC. 9. RELIANCE ON PAST ADMINISTRATIVE RULINGS, ETC.—In any action or proceeding commenced prior to or on or after the date of the enactment of this Act based on any act or omission prior to the date of the enactment of this Act, no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act, if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any administrative regulation, order, ruling, approval, or interpretation, of any agency of the

United States, or any administrative practice or enforcement policy of any such agency with respect to the class of employers to which he belonged. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

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